

DEPARTMENT OF FINANCIAL )  
INSTITUTIONS, )  
COMPLIANCE DIVISION, )  
Petitioner, )  
 )  
v. ) No. 03.00-103295J  
 )  
WANDA GAIL HARLAN, individually )  
and d/b/a CENTRAL CASH, )  
Respondent. )

The Respondent, Wanda Gail Harlan, individually and d/b/a Central Cash, initiated this appeal of the Order of Default and Initial Order entered by Steve R. Darnell, Administrative Law Judge within the Department of State, Administrative Procedures Division on January 4, 2010. The Order of Default and Initial Order held that the Respondent was in default because she had failed “to participate in a stage of a contested case.” The Order also held that the Tennessee Department of Financial Institutions, Compliance Division, (“TDFI”) had met its burden of proof by a preponderance of the evidence that Respondent had engaged business of title pledge lending without being licensed by the Commissioner of Financial Institutions in violation of TENN. CODE ANN. § 45-15-105(a), and failed to reimburse the Petitioner for reasonable and actual examination expenses in violation of TENN. CODE ANN. § 45-15-108(b). The Respondent was ordered to cease and desist committing future violations of the Title Pledge Lending Act (the “Act”) and refund forty-four thousand four hundred forty-five dollars and eighteen cents (\$44,445.18) in title pledge fees collected from unlicensed title pledge

business activity. Respondent was also assessed civil penalties in the amount of four hundred two thousand dollars (\$402,000.00) for each of the four hundred two unlicensed title pledge transactions she executed in violation of the Act, and ordered to pay eight hundred twenty-five dollars in past due examination expenses.

Respondent appealed the Order of Default and Initial Order to the Commissioner of Financial Institutions on February 10, 2010, alleging that this matter is subject to the automatic stay provisions of the 11 U.S.C.S. § 362(a)(1), the United States Bankruptcy Code. On April 19, 2010, Governor Phil Bredesen appointed the Commissioner of Commerce and Insurance to substitute for the Commissioner of Financial Institutions and preside over this appeal pursuant to TENN. CODE ANN. § 4-5-302(e)(1). In accordance with an Amended Scheduling Order entered on June 1, 2010, the parties submitted briefs in support of, and in opposition to, this appeal.

Upon careful review of the record in this matter and due consideration of the briefs filed by the parties, the following findings are made:

#### **FINDINGS OF FACT**

1. The Findings of Fact of the Order of Default and Initial Order are adopted and incorporated herein by reference.

#### **CONCLUSIONS OF LAW**

2. The Conclusions of Law 42-47 of the Order of Default and Initial Order are adopted and incorporated herein by reference and additional Conclusions of Law are made as follows:

3. 11 U.S.C. § 362(b) provides:

[t]he filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection

Act of 1970, does not operate as a stay-- . . . (4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.

4. The legislative intent of the “police or regulatory power” exception to the automatic stay provisions of the federal bankruptcy laws is “to allow government agencies to remain unfettered by the bankruptcy code in the exercise of their regulatory powers.” *In re Commerce Oil Co.*, 847 F.2d 291, 295 (6<sup>th</sup> Cir. 1988).

§362(b) [p]aragraph (4) excepts commencement or continuation of actions and proceedings by governmental units to enforce police or regulatory power. Thus, where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, safety, or similar police or regulatory powers, or attempting to fix damages for violation of such law, the action or proceeding is not stayed under the automatic stay. *Id.*, citing S.Rep. No. 95-989, 95<sup>th</sup> Cong., 2d Sess. (1978), *reprinted in* [1978], U.S. CODE CONG. & AD.NEWS 5787, 5838; H.R.Rep. No. 95-595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 343 (1977), *reprinted in* [1978] U.S.CODE CONG. & AD.NEWS 5963, 6299.

5. The United States Court of Appeals for the Sixth Circuit has held that two tests may be applied in order to determine whether a state agency's action is an exercise of “police or regulatory power” and consequently excepted from the federal bankruptcy automatic stay provisions: the “pecuniary purpose” and “public policy” tests. *In re Commerce Oil Co.*, 847 F.2d 291, 295 (6<sup>th</sup> Cir. 1988).

6. Under the “pecuniary purpose” test, a state agency's action that primarily advances the interests of public safety rather than the government's financial interest in the debtor's estate is excepted from the automatic stay provisions. *Id.* The Court's inquiry “focus[es] on whether the enforcement action would result in a pecuniary

advantage to the government vis-à-vis other creditors of the bankruptcy estate.” *Chao v. Hospital Staffing Services, Inc.*, 270 F.3d 374, 389, n.9 (6<sup>th</sup> Cir. 2001)(emphasis in the original).

7. The “public policy” test distinguishes “between proceedings that adjudicate private rights and those that effectuate public policy.” *In re Commerce Oil Co.*, 847 F.2d 291, 295 (6<sup>th</sup> Cir. 1988)(citing *NLRB v. Edward Cooper Painting, Inc.*, 804 F.2d 934, 924 (6<sup>th</sup> Cir. 1986)).

8. TENN. CODE ANN. § 45-15-102 articulates the purpose of the Tennessee Title Pledge Act:

The making of title pledge loans vitally affects the general economy of this state and the public interest and welfare of its citizens. It is the policy of this state and the purpose of this chapter to: (1) Ensure a sound system of making title pledge loans through statewide licensing of title pledge lenders by the department of financial institutions; (2) Establish licensing requirements; (3) Provide for the examination and regulation of title pledge lenders by the department of financial institutions; and (4) Ensure financial responsibility to the public.

9. It is clear that under both tests, the subject enforcement action is not subject to the automatic stay provisions. Monitoring the financial soundness of title pledge lenders, promoting compliance with the requirements of the Act, protecting consumers from financially irresponsible business practices, punishing wrongdoers, and deterring and enjoining illegal activity are among the TDFI’s imperatives under the Act. These duties are not based upon interests in state property or the Respondent’s property. The initiation of this administrative enforcement action and its pursuit to resolution are exercises of TDFI’s regulatory power. Neither the agency’s pecuniary interest in assessing civil penalties and recovering examination costs, nor its request for consumer

restitution are the primary objectives of the enforcement action and the resulting judgment. Although TDFI intends to file the Final Order as its claim in the bankruptcy proceeding if it fixes damages for violations of the Act, the settlement agreement reached between the parties in the bankruptcy action does not place TDFI's or consumer interests at an advantage to the interests of the Respondent's other unsecured creditors.

**WHEREFORE**, it is hereby **ORDERED AND ADJUDGED** that the Order of Default and Initial Order entered on January 4, 2010 by Administrative Law Judge Steve R. Darnell is **AFFIRMED** and expressly incorporated herein by reference. For good cause shown and by agreement of the parties, this Final Order is made pursuant to TENN. CODE ANN. §4-5-315 and marks the disposition of this matter. This Order shall take effect upon filing with the Department of State, Office of Administrative Procedures.

**NOTICE OF RECONSIDERATION AND APPEAL PROCEDURES**

Within fifteen (15) days after the Final Order is entered, a party may file a Petition for Reconsideration of the Final Order with the Commissioner, in which the Petitioner shall state the specific reasons why the Final Order was in error. If no action is taken within twenty (20) days of filing of the Petition for Reconsideration, the Petitioner is deemed denied. TENN. CODE ANN. § 4-5-317.

A party who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in Davidson County Chancery Court within sixty (60) days after the entry of the Final Order, or if a Petition for Reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the Petition for Reconsideration. The filing of a Petition for Reconsideration does not itself act to extend the sixty (60) day period, if the petition is not granted. A

reviewing court also may order a stay of the Final Order upon appropriate terms. TENN.

CODE ANN. §§ 4-5-322 and 4-5-317.

**IT IS SO ORDERED.**

This 10<sup>th</sup> day of December, 2010.

Leslie A. Newman  
**Leslie A. Newman**  
**Commissioner of Commerce and Insurance**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Final Order has been filed in the Administrative Procedures Division, Department of State, William Snodgrass Tower, 8<sup>th</sup> Floor, 312 Eighth Avenue North, Nashville, Tennessee 37243, and sent via Certified Mail, Return Receipt Requested and by United States Mail, First Class, Postage Prepaid, to Joseph Schmidt, Esq., Attorney for the Petitioner, the Department of Financial Institutions, 414 Union Street, Suite 1000, Nashville, Tennessee 37219, and Steven L. Lefkovitz, Esq., attorney for the Respondent, Wanda Gail Harlan d/b/a Central Cash, The Law Offices of Lefkovitz & Lefkovitz, 618 Church Street, Suite 410, Nashville, Tennessee 37219, on this 14<sup>th</sup> day of December, 2010.

  
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Certifying Attorney